IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REV.APPLICATION NO.142 OF 2006

Ahemad Kadge .. Applicant

Versus

State of Maharashtra .. Respondent

Mr.Prabhanjan Dave for applicant

Mr.S.S.Pednekar, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 28th November 2006.

P.C.

. This Revision application challenges an order passed by the learned Special Judge, Mumbai in Misc.Application No.65 of 2005 in Special Case

No.68 of 2002. Applicant before me is the father of one Farooqh Ahmed Kadge, who is the accused in Special Case. Applicant preferred this Misc.Application contending that during the course of investigation, respondents have frozen the bank account with the Abhyuday Coop.Bank Seweree branch, Mumbai bearing No.81887. Applicant is father of the accused. According to applicant the said bank account has a credit balance of Rs.4,17612.70. It is pointed out that the accused has been diagnosed with H.I.V. and presently taking treatment for the said ailment. He was hospitalised at the relevant time. Similarly, applicant is also suffering with nuerological problem for which he has to take treatment.

2. Arguments proceed on the basis that not the entire amount in this account could be said to be belonging to the accused. It is not as if the applicant is prohibited in law from utilising

the bank account provided he demonstrates that the funds therein belong to him. The account may be joint but ultimately it is not that the account has to be frozen for all times to come.

3. This application has been rejected by the learned Judge on the ground that the amounts which have been deposited in this account do not reflect the correct position inasmuch as some of the amounts are from the monies that have been paid to the applicant and others to the accused by several candidates, who were to be either examined or interviewed by the Maharashtra Public Service Commission. Essentially, the application came to be rejected because applicant refused to cooperate with the I.O. and did not attend as directed by the trial Judge.

4. When this revision application was placed before me on 9th November 2006, after hearing both sides, I had recorded statement of Mr.Dave

that the applicant would attend concerned police station for the purpose of verification and scrutiny of the entries in the bank account. The matter was adjourned because, A.P.P. sought time to file affidavit. Affidavit has been filed now by Mr.Pardeshi, Assistant Commissioner of Police, A.C.B. He denied contents of the revision application and has pointed out that the applicant despite attending the office of I.O. has failed to satisfy that the monies in the bank account are exclusive property of applicant. Documents in that behalf including agreement for sale are not genuine.

5. However, from a perusal of the affidavit and more particularly paras 5 and 6 thereof, it is seen that the respondent do not specifically deny that during the course of his service at Kuwait, the applicant in the ten years period has earned some amount so also was paid some compensation because of gulf war. Respondents

seem to suggest that this amount must not be more than 2.50 lakhs.

6. In my view, while maintaining the order of learned Special Judge, as far as the request to operate the account, the direction can be issued that the applicant shall be permitted to withdraw a sum of Rs.2,50,000/- from the Account No.81887 in Abhyuday Coop.Bank, Seweree branch, provided he gives complete account of the manner in which the same is utilised by him after withdrawal. This order is passed because the applicant has pointed out serious ailment of the accused so also his neurological problem. Therefore, taking a sympathetic view of the ailment and for its treatment, the permission to withdraw the amount is granted.

7. If the applicant desires withdrawal of further sums, he would be at liberty to make fresh application to trial court and such

application shall be considered on its own merits and in accordance with law. All concerned to act on an authenticated copy of this order. Applicant is permitted to withdraw a sum of Rs.2.50 lakhs and the concerned branch of Abhyuday Coop.Bank to act accordingly. However, he shall have to furnish detailed account of its utilisation periodically to the I.O. The first account be forwarded within 4 weeks of the withdrawal thereof.

(S.C.Dharmadhikari, J)